

In The Matter Of:
*Rhode Island Economic Development Corporation vs
Wells Fargo Securities, LLC*

*Cheryl Snead
Vol. II
July 25, 2014*



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Min-U-Script® with Word Index

1 going to try to be as quick as I can. Do you who
2 Gina Raimondo is?
3 A. I do.
4 Q. Do you have any relationship with her?
5 A. Not personally.
6 Q. Have you supported her politically?
7 A. No, I don't support any candidate
8 politically.
9 Q. Did you learn before the final vote of the board
10 on July 26, 2010 what Ms. Raimondo's position was
11 on the 38 Studios transaction?
12 A. I don't remember.
13 Q. You don't have a memory one way or the other?
14 A. Correct.
15 Q. You told us a few moments ago, I think, you served
16 on the EDC board for, did you say five years?
17 A. I believe it was almost five years, yes.
18 Q. In the course of your service on the board, did
19 you make decisions or cast a vote, among other
20 things, on various entities who were requesting
21 loans from EDC?
22 A. Yes.
23 Q. Okay. And was it the general practice in those
24 situations that the board members who receive a
25 credit memo from staff with respect to a loan

1 responsibilities of 38 Studios, the credit
2 analysis of the underwriting --
3 MR. SHEEHAN: You meant EDC.
4 Q. Did you understand that one of Sean Esten's
5 responsibilities at EDC was to review loan
6 applications?
7 A. Yes.
8 Q. And to make recommendations on whether the
9 application should be approved or disapproved?
10 A. He was an underwriter, correct.
11 Q. You said it better than I did. One of his
12 responsibilities as an underwriter for EDC was to
13 review the creditworthiness of a loan applicant?
14 A. Yes.
15 Q. By creditworthiness, you understand that term to
16 refer to the ability of the borrower to pay back a
17 loan?
18 A. Correct.
19 Q. Now, I think you anticipated this earlier, did you
20 receive a credit memo in connection with the 38
21 Studios transaction?
22 A. I believe we did, yes.
23 Q. When in the process do you believe you received
24 that memo?
25 A. It would have been part of the package, and I

1 application?
2 A. Absolutely.
3 Q. And we're talking about a credit memo being a
4 written memorandum that you would be able to read
5 before you were asked to cast your vote?
6 A. Correct. And that was before 38 Studios as
7 well as after.
8 Q. Okay. You're already anticipating my question,
9 but let me ask one more. Did that credit memo
10 typically contain a recommendation from staff on
11 whether to approve the loan or reject the loan?
12 A. Yes. And it would not have been brought
13 forth to the board if it wasn't a loan that
14 they're suggesting be approved.
15 Q. Okay. Did you ever receive a credit memo that
16 suggested not approving the loan?
17 A. Not that I can remember.
18 Q. Okay. Did Sean Esten write a credit memorandum
19 that you reviewed?
20 A. He wrote them subsequent to the 38 Studios.
21 I don't remember him doing any prior.
22 Q. Is it possible he did them prior, you just don't
23 recall?
24 A. It's possible, yes.
25 Q. Did you understand that was one of his

1 can't remember which board meeting, but it
2 definitely would have been part of the Job
3 Creation Guaranty Program recommendation for 38
4 Studios.
5 Q. All right. And you believe it would have been --
6 you would have received it as part of a package of
7 materials before one of the board meetings at
8 which you considered or discussed 38 Studios?
9 A. Yes. We always received a package to review
10 before there was going to be a vote on something.
11 Q. Okay. And would it have raised an alarm or red
12 flag for you if you did not receive a credit memo
13 in connection with the 38 Studios transaction?
14 A. Any transaction.
15 Q. Any transaction. So that was your expectation as
16 a board member, that before any transaction, the
17 board should receive and review a memo from staff
18 reviewing that transaction and making a
19 recommendation?
20 A. Yes. And as I said, I don't ever remember
21 staff, EDC staff presenting a recommendation where
22 they're declining. They had the authority to
23 decline something and not present it to the board.
24 That would have wasted our time.
25 Q. During your years on the EDC board, do you

1 remember any other transaction, loan transaction
2 we'll start with that, that had more direct
3 involvement by a governor than the 38 Studios
4 transaction?
5 A. No.
6 Q. Do you remember any other loan transaction where
7 it appeared to you that the governor was, in
8 effect, sponsoring that loan to the board?
9 MR. SHEEHAN: Objection to the form.
10 A. No. But the caveat is what made this
11 different was one it was the first opportunity to
12 bring a new industry and tied to the Knowledge
13 District, which was really a potential legacy for
14 the state. So I think the governor's involvement
15 was about championing, not necessarily the
16 company, but the concept and the vision of the
17 cluster.
18 Q. But as you noted, the governor was championing the
19 38 Studios loan; is that fair to say?
20 A. Yes.
21 Q. Do you know whether or not Sean Esten was involved
22 in the 38 Studios -- underwriting of the 38
23 Studios loan?
24 A. I don't know, but I remember him at the
25 meetings, the board meetings, sitting on the

1 make that loan?
2 A. Yes.
3 Q. Okay. I'm not going to ask you a million
4 questions about the structure, don't worry about
5 that. So, EDC was acting as a lender and 38
6 Studios was acting as borrower in this
7 transaction, fair to say?
8 A. Yeah. We were actually acting as a
9 guarantor.
10 Q. Did you know that there was a loan and trust
11 agreement prepared between EDC and 38 Studios?
12 A. I don't remember about that particular title.
13 Q. But to go back to my earlier question, did you
14 understand that EDC was making a \$75 million loan
15 to 38 Studios and 38 Studios was going to have an
16 obligation to pay that back to EDC?
17 A. Yes.
18 Q. The EDC would use those funds to pay the bonds?
19 A. Yes.
20 Q. Now, during the course of your deliberation, Ms.
21 Snead, did the board evaluate the likelihood that
22 38 Studios would be able to repay that loan?
23 A. Yes.
24 Q. Did that evaluation lead to the conclusion that in
25 order for 38 Studios to repay that loan, both of

1 sides.
2 Q. Okay. Do you know that he raised substantial
3 concerns about that transaction?
4 A. I don't.
5 Q. Okay. Would it have impacted your view, I
6 understand you didn't cast a vote on July 26, but
7 would have it impacted your view of that
8 transaction if Sean Esten prepared a credit memo
9 that recommended that the EDC board not approve
10 the loan to 38 Studios?
11 A. I think getting that feedback from an
12 underwriter on any transaction would be cause for
13 further discussion.
14 Q. Would you agree that would be very important
15 information for you as a board member to have?
16 A. It would.
17 Q. And information you would have taken that very
18 seriously?
19 A. Yes.
20 Q. Let me move to a slightly different topic. You
21 understood that as part of the 38 Studios
22 transaction, EDC was being asked to make a \$75
23 million to 38 Studios?
24 A. Yes.
25 Q. And the bonds were used to generate the funds to

1 the games we've been talking about, Mercury and
2 Copernicus, needed to be successful in the
3 marketplace?
4 A. No.
5 Q. Okay. Was it your understanding during the summer
6 of 2010 that one of those games could fail and 38
7 Studios would still be able to repay the loan?
8 A. That was my understanding. That RPG, or
9 whatever it's called, wasn't tied to the success
10 of Copernicus.
11 Q. Let me try it another way. Was it your
12 understanding that under the financial projections
13 that 38 Studios had prepared there would be
14 sufficient cash flow to pay back the loan, even if
15 Mercury, the RPG game, did not generate revenue?
16 A. Correct.
17 Q. Who told you that?
18 A. I don't remember.
19 Q. Where did you arrive -- how did you arrive at that
20 conclusion?
21 A. I'm sorry, I don't remember. But I know I
22 personally saw or heard or was able to validate
23 that the cash flow was there for them to repay the
24 loan. If the numbers or the projections or the
25 data didn't show that they could repay this loan,